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December 20, 2019

Via ECF

The Hon. Alison J. Nathan
United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: *Doe v. U.S. Immigration & Customs Enforcement*, No. 19 Civ. 8892

Dear Judge Nathan:

I write on behalf of a group of immigration law scholars pursuant to Rule 1 of Your Honor's Individual Practices in Civil Cases to move for leave to file an *amicus curiae* brief in support of Plaintiffs' opposition to Defendants' motion to dismiss in the above-referenced case (ECF No. 63). I have conferred with counsel for the parties and advise the Court that Plaintiffs consent to the motion and that Defendants take no position on the motion.

INTEREST OF *AMICI CURIAE*

Amici are scholars of constitutional law, criminal law, and immigration law. Collectively, their scholarship addresses the recent history of immigration enforcement, the entanglement of state and local criminal systems in immigration enforcement, and the phenomenon of courthouse immigration arrests and legal issues attendant thereto. *Amici* have expertise and a professional interest in the proper construction and enforcement of constitutional and statutory limits on federal immigration enforcement authority and seek to bring that expertise and interest to bear here by illuminating historical developments in this area, an understanding of which is critical to a resolution of the claims before the Court.

As of the time of this filing, *amicus curiae* include Professor Christopher Lasch of the University of Denver Sturm College of Law; Professor Sarah Rogerson of Albany Law School; Professor Dina Francesca Haynes of New England Law | Boston; Professor Annie Lai of the University of California Irvine School of Law; Professor Rick Su of the University of North Carolina School of Law; Professor Ingrid Eagly of the University of California Los Angeles School of Law; Professor Jennifer Chacón of the University of California Los Angeles School of Law; Professor Rose Cuison-Villazor of Rutgers Law School; Professor Michael Wishnie of Yale Law School; and Professor Pratheepan Gulasekaram of Santa Clara University School of Law. *Amici* anticipate that other immigration law scholars may wish to join the proposed *amicus* brief as well.

The Hon. Alison J. Nathan
December 20, 2019
Page 2

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REASONS TO GRANT LEAVE TO FILE AN *AMICUS* BRIEF

There is no statute or local rule that directly controls when a district court in this Circuit may entertain an *amicus curiae* brief. *Auto. Club of New York, Inc. v. Port Auth. of New York and New Jersey*, No. 11 Civ. 6746 (RJH), 2011 WL 5865296, at *1 (S.D.N.Y. Nov. 22, 2011) (collecting cases). The decision is committed to the district court's sound discretion. *See Picard v. Greiff*, 797 F. Supp. 2d 451, 452 (S.D.N.Y. 2011). District courts frequently look to Rule 29 of the Federal Rules of Appellate Procedure to guide their exercise of discretion. Rule 29 provides that a court may permit an *amicus curiae* brief if the brief is "desirable" and that "the matters asserted are relevant to the disposition of the case." Fed. R. App. P. 29(a)(3)(B).

The proposed *amicus* brief is desirable and relevant because this case concerns an important matter of public interest and because *amici* have special expertise concerning the history, scope, and substance of the common-law privilege against civil arrest while at a state courthouse or its environs, or while traveling to or from state-court proceedings. The immigration law scholars listed above recently filed an *amicus curiae* brief in a comparable case pending before Judge Rakoff. *See* Brief of Immigration Law Scholars As *Amici Curiae* in Support of Plaintiffs, *New York v. United States Immigration and Customs Enforcement*, No. 19 Civ. 8876 (Nov. 5, 2019, ECF No. 32). They wish to provide similar assistance to the Court in this case and respectfully seek leave to file an *amicus curiae* brief on the date that Plaintiffs' opposition to Defendants' motion to dismiss is due, *i.e.*, December 27, 2019 (ECF No. 61).

Respectfully submitted,

/s/ Brian A. Sutherland

cc: All Counsel of Record (*via ECF*)